



# Industrial Special Indemnity Fund (ISIF)

## Fiscal Year 2014 Annual Report

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## INTRODUCTION TO ISIF

The Industrial Special Indemnity Fund (ISIF) was adopted in 1927 by the Idaho State Legislature as part of the state's comprehensive workers compensation system. The ISIF is more commonly referred to as the "second injury fund." Its general purpose when enacted was to encourage employers to hire disabled workers by offering the last employer relief from liability for total and permanent disability, if the disabled worker was subsequently injured and became totally and permanently disabled following a second or subsequent injury at work.

The purpose and management of the ISIF was created in Sections 72-323, 324, 331 and 334, Idaho Code.

Funding for the ISIF is provided by an annual assessment, which is paid in two installments. The assessment is calculated by determining an amount which is two times (2x) all ISIF expenses during the immediately preceding fiscal year less (-) the cash balance at the end of that fiscal year. The total assessment is then pro-rated by the Idaho Industrial Commission semi-annually among the State Insurance Fund, self-insured employers, and other sureties based on each entity's proportionate share of total indemnity (income) benefits paid on open workers' compensation claims during the reporting period. A notice of the pro-rated amount is then prepared by the Industrial Commission for each responsible entity. Additionally, the Commission invoices each entity for the assessment and collects the funds on behalf of the ISIF. The latter service by the Industrial Commission is undertaken through a separate contract with the ISIF.

ISIF is liable for total and permanent disability (income) benefits during the lifetime of the injured worker. All other benefits within the workers compensation program are the responsibility of the last employer/surety; i.e. retraining, medical, vocational, functional loss, partial disability, etc. Allocation of liability for total and permanent disability between the employer/surety and the ISIF is apportioned under what is called the "Carey formula." Cited in the case of *Carey v. Clearwater*.

Claims for benefits from ISIF are started by filing a Notice of Intent to File a Complaint Against the ISIF (NOI). Such notices are usually filed by attorneys representing claimants, self-insured employers and insurance entities seeking ISIF contribution for total disability benefits. The notices are filed under what is commonly called the "60 day rule." Section 72-334, Idaho Code. During the 60 days, the ISIF will undertake an in-house review of the claim for liability and will either resolve or deny the claim. Following the conclusion of 60 days if the claim is not resolved, the party filing the NOI can elect to file a formal Complaint against the ISIF, or determine to proceed no further with the claim. Upon receipt of a Complaint, the ISIF will retain outside legal counsel and commence formal litigation of the claim for lifetime benefits.

Resolution of claims can be accomplished by a contested hearing process, lump sum settlement, periodic monthly payments, deferred lump sum or periodic payment, or any combination of these options with the approval of the Industrial Commission.

Benefit rates for total and permanent disability, and hence ISIF liability, are part of a statutory system too complicated to explain in this Introduction. In general, the benefits are based on the average weekly wage of the injured worker compared to the average weekly state wage (ASW) of all workers in Idaho. The comparison falls into categories of 45%, 60% or 67% of the ASW. Benefits are then paid depending on the particular wage category. Benefits may change from year-to-year as the average weekly state wage may change with inflationary factors.

## OPERATIONS

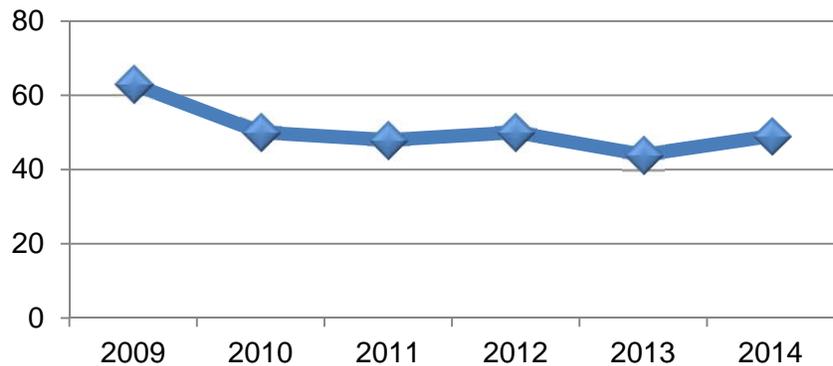
### Claims Management

Managing claims is a major function of this agency. Management takes the form of initially evaluating the NOIs in-house and responding within the statutory time period of 60 days. If the claim proceeds to a formal Complaint filed with the Industrial Commission, then management takes a more formal approach of adjudicating the claim with the assistance of outside legal counsel. In either situation, ISIF personnel are actively involved in all phases of the claim from initial filing to final resolution.

The information in this report is based on fiscal year (FY) statistics, which end on June 30.

2009	63
2010	50
2011	48
2012	50
2013	44
2014	49

**Notice of Intent Filings (FY)**

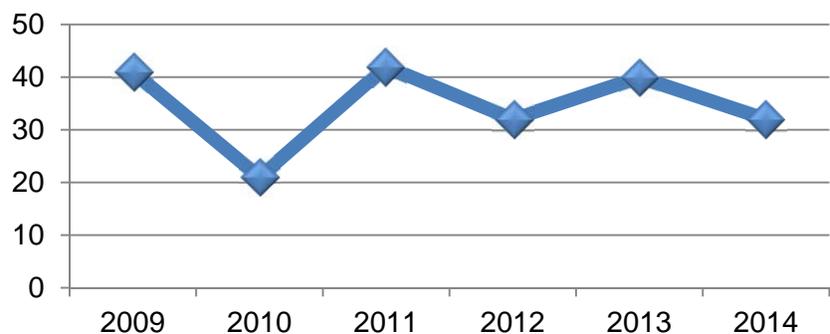


The number of NOIs submitted is now beginning to level off from the filings five years ago.

The number of complaints being filed is not as level as the NOIs, largely due to the fact that a complaint does not necessarily have to be filed in the same year as the NOI. However, during this same time period, the ISIF has experienced a slight downward trend in the number of formal complaints filed with the Industrial Commission.

2009	41
2010	21
2011	42
2012	32
2013	40
2014	32

**Complaint Filings FY**



Even though the numbers actually show a slightly downward trend in the claims and complaints actually filed, the ISIF has been facing an ever increasing challenge in the last few years in controlling the overall cost of litigation. Due to economic changes in the workplace, a drop in available jobs has caused a decrease in available opportunities for injured workers to reenter the job market and maintain an active employment status. Thus, it has become more difficult for the ISIF to find an actual job, which is open and available, that fits the physical restrictions of the injured worker. Under those circumstances, the ISIF may be responsible for lifetime benefits.

Additional changes at the federal level have created an attractive atmosphere, in lieu of continued employment, for injured workers to receive long-term total disability benefits with relative ease that were not previously so easily available. Thus, injured workers have in many instances determined to largely forego regular employment or part-time employment. Instead, many injured workers now leave the work force and obtain federal benefits, usually Social Security Disability, even if those benefits are less than working an actual job. These same injured workers then apply to the ISIF for what amounts to lifetime pension benefits.

The ages of claimants seeking benefits from ISIF have expanded greatly over the past few years and now range from the mid-30's to mid-70. This spread is growing further apart each year.

ISIF is proactive in bringing claims to final resolution. The manner in which the claims are closely monitored and vigorously defended may be one reason for the slight downward trend in filings. By actively managing the claims and working closely with outside legal counsel, litigation costs, liability exposure, and operational costs are held to acceptable levels. Needless to say, however, that with a more complex environment in the worker compensation industry, costs have increased in any event.

## **Benefits Administration**

### *Claim Evaluation*

The relative costs and time delays associated with the litigation process are now a natural occurrence of complex litigation and have been a long standing concern to the ISIF. Since judicial review of an injured worker's potential disability is not conducted until the hearing, any unnecessary delay will work to the disadvantage of ISIF. Put another way, any unnecessary delay in the judicial process will more-than-likely diminish the already poor physical and overall general health conditions of the worker. As a result, the likelihood of establishing liability is increased. Such factors precipitated the ISIF in proposing and getting adopted critical legislation in 1997 commonly known as the "60 day rule" in filing NOIs. This statute allows the ISIF 60 days to review, evaluate and possibly settle claims without involving extensive use of outside legal counsel and the time consuming judicial process.

Even without resolution of the claim during the 60-day period, the legislation has permitted ISIF to better manage overall litigation expenses with an initial in-house evaluation of the claim. In addition, the legislation sought to bring faster relief and a less litigious process to claimants, sureties and self-insured employers. In some claims, the new rule has met its expectations. However, in far too many claims, the material submitted to ISIF for review is not entirely relevant and contains many extraneous documents having no bearing on ISIF liability. This creates a frustrating process leading to denial of a claim, which then leads to formal litigation necessitating a more complex process, which equates to more costs and expense for all litigants. When this occurs, the intent of the 60-day rule is stymied.

### *Settlement Process*

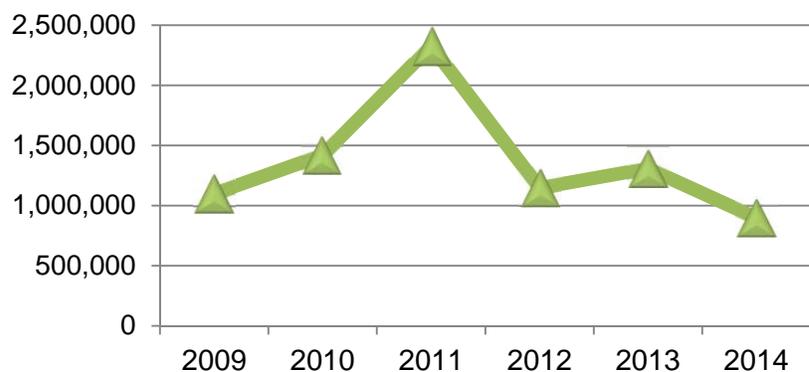
One way to bring cases to final resolution is through the settlement process. As mentioned previously, a final settlement can be accomplished in several ways through a one-time lump sum payment, periodic monthly payments, deferred lump sum or periodic payments, or any combination of these options with the approval of the Industrial Commission.

Over the past 6 years, Idaho case law has made the settlement process more complicated for ISIF. These cases set fundamental standards for ISIF in bringing settlement proposals to the attention of the Industrial Commission. In essence, the ISIF must now concede all issues of liability before a settlement can be negotiated, prepared and delivered to the Commission for review and ultimate approval. This process has necessarily resulted in more complex procedures involving pre-hearing discovery, which by necessity create longer time frames to explore and more fully evaluate all aspects of liability on the part of ISIF before a potential settlement can be negotiated and presented for approval.

Set out below are the amounts of lump sum settlements during the past 6 years.

2009	\$1,100,430
2010	\$1,419,374
2011	\$2,329,229
2012	\$1,147,275
2013	\$1,309,308
2014	\$ 898,642

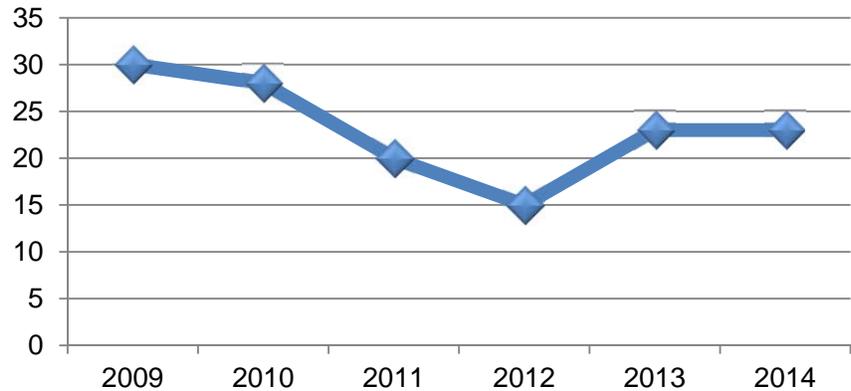
**Lump Sum Settlements FY**



In the past six years, litigation costs have stabilized even though the caseloads for each attorney have increased. With fewer opportunities for lump sum settlements, more innovative ways to resolve cases have been implemented and have gained approval from the Industrial Commission. Such resolution measures have increased the overall closure of cases. The chart below represents cases closed by way of both lump sum settlements and agreements for statutory benefits without the need for an adversary hearing to determine the outcome.

**Cases Closed by Settlement Agreement FY**

2009	30
2010	28
2011	20
2012	15
2013	23
2014	23

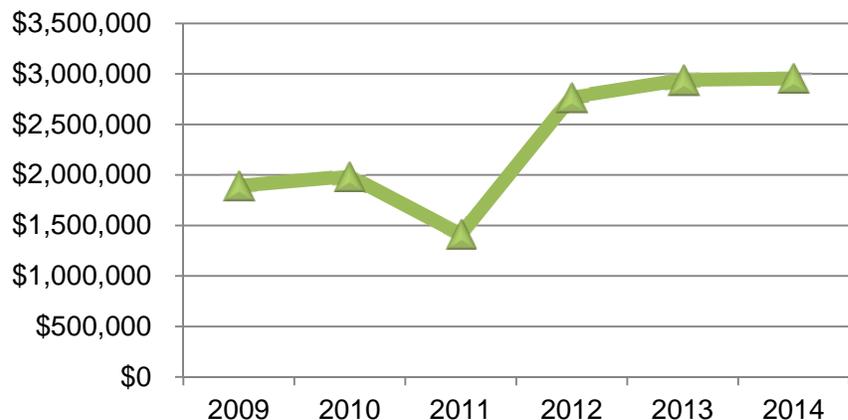


*Judicial Process*

Another avenue in resolving cases is through the judicial hearing process, in which the parties actively litigate the liability of the ISIF before the Industrial Commission. Should the ISIF be held liable, then monthly statutory benefits are paid during the lifetime of the disabled worker. Since 2009, 27 lifetime beneficiaries have been added to the rolls. During that same time, 24 have passed away. However, since the new beneficiaries are coming in at a higher wage rate than their earlier counterparts, the overall cost for this administration his increasing dramatically. Further, regular inflationary increases add to the overall cost of this benefit. As a result, the payouts have increased 56% from just five years ago, which is an average of 11.2% per year. This trend is clearly of great concern to the ISIF. Should this trend continue, the payments for monthly annuitants would double every 6 1/2 years. The good news seems to be that the spike in the increase of two years ago has leveled off somewhat.

**Monthly Annuitant Payouts FY**

2009	\$1,892,323
2010	\$1,988,110
2011	\$1,412,555
2012	\$2,771,550
2013	\$2,941,395
2014	\$2,954,538



## Litigation Costs

Overall costs of outside legal counsel are set out below. Such costs include claim file review, pre-hearing depositions, travel, discovery of medical, employment and vocational information, record review summaries, analysis of potential issues and defense strategies, evidentiary hearings, post-hearing depositions, and formal legal briefing to the Industrial Commission and, in selected cases, the Idaho Supreme Court.

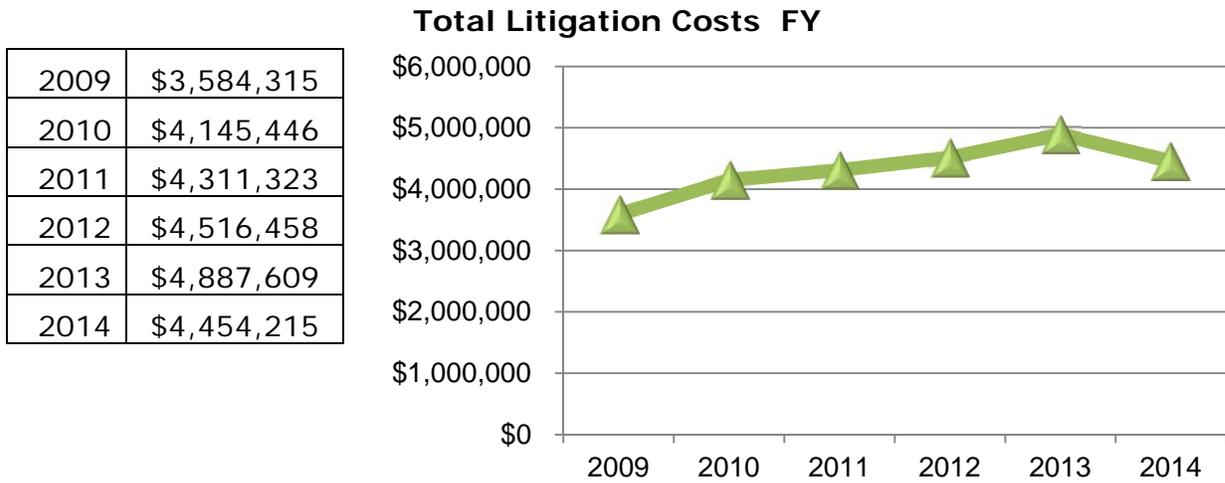
In the past three years, the ISIF has added one more attorney to its staff of outside legal counsel making the total number of attorneys now eight. All ISIF attorneys are well-experienced in the work comp industry and continue to add an increased professional stature to the agency.

Even with the need for eight attorneys and the increased complexity of recent cases, legal costs are still significantly lower than six years ago. The chart below illustrates the costs of legal representation for the ISIF.



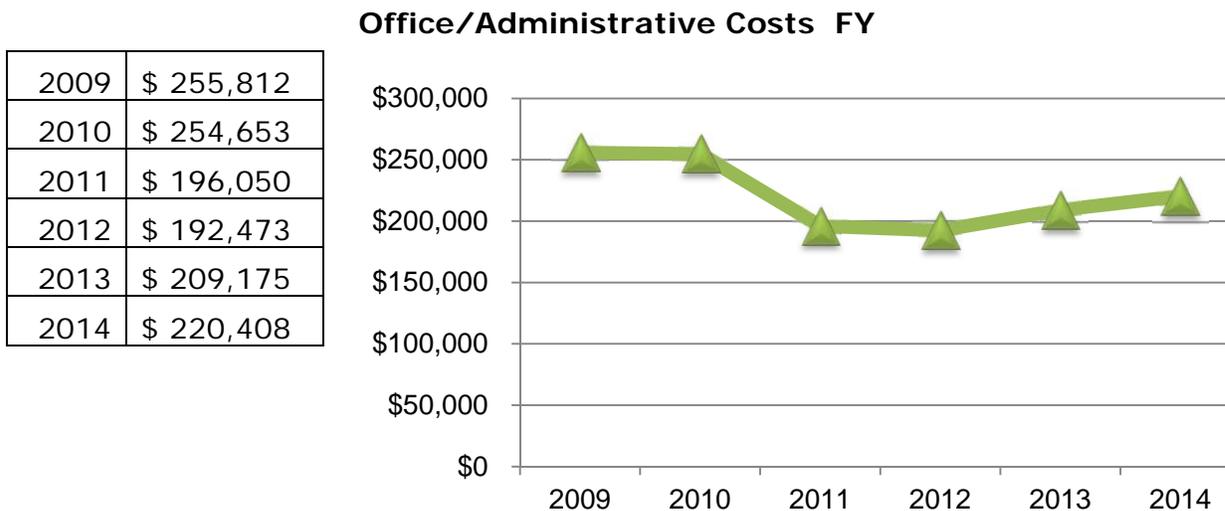
As the above chart indicates, costs have been trending downward. Such a trend is largely due to the active participation by ISIF staff in all phases of each case with the attorney assigned to represent the ISIF. Such activity has led to more efficient representation by outside counsel directing resources to meaningful defense strategies and more successful outcomes in litigation and/or settlements.

Thus, total litigation costs composed of attorney fees and costs, monthly beneficiary payments, and lump sum settlements have experienced a fairly level trend in the past few years. An overall increase of 24% during this period is quite acceptable with an average of 4% each year. An illustration of these costs is set out below:



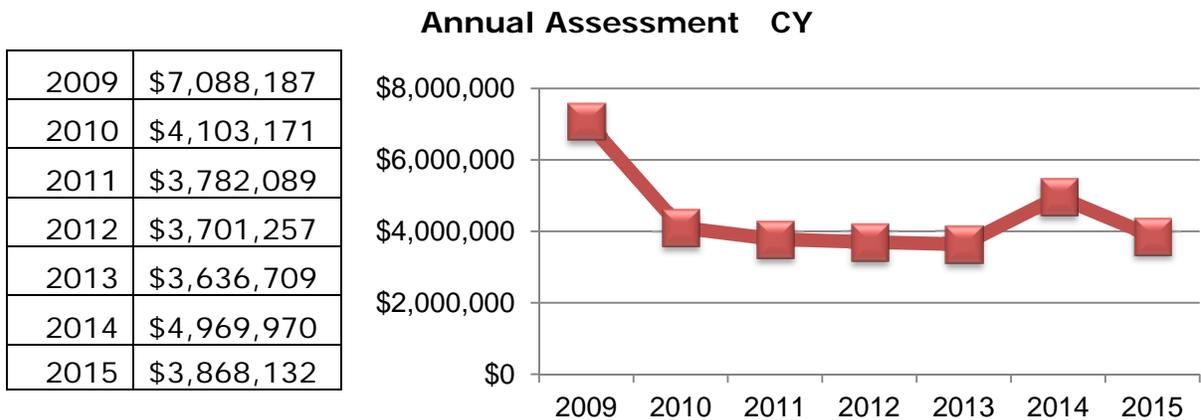
**Office Administration**

The final piece to the expense-side of ISIF is the cost of operating an administrative office. This is rather a small amount compared to the other major expenses in managing the ISIF. In 2010, the staff was cut from 3 to 2. As a result, the expenses include two full time employees and general office expenses such as office rent, copy/fax/email machine rental, general support services from the main office, supplies, and travel. These costs have been fairly stable over the past few years but show a modest increase due to moving to a larger office three years ago, rent, file storage, and salaries. Overall, however, the administrative costs have decreased by 14% from five years ago.



## ASSESSMENT

The ISIF is funded through an annual assessment to sureties, self-insured employers, and the State Insurance Fund. It is calculated by a rather simple method of taking two times (2x) the total expenses of ISIF for the most recent fiscal year minus (-) ending cash from that same fiscal year. This calculation is then pro-rated by the Industrial Commission on a semi-annual basis for the insurance entity's share of total indemnity (income) benefits paid on workers' compensation claims during the reporting period. The assessment is then billed to insurance carriers or self-insured employers. The insurance carriers then forward the cost to individual employers for payment as part of their insurance premiums. Below is an illustration of Assessments from 2009 to 2015.



The expenditure-side of the Assessment is broken into four main categories: settlement payments, monthly income payments to totally and permanently disabled workers, attorney fees and costs, and office expenses. These costs have been detailed in previous parts of this Report. Generally, expenses have been more predictable in recent years due to their relative stability. The cash-side of the Assessment, however, is more variable each year. As cash is used to a greater extent, the Assessment fluctuates more. For example, when a greater use of cash takes place, it necessarily creates a higher percentage of expenses compared to ending cash. With this scenario, an increase in the annual assessment will take place. Such a situation created the basis for the significant rise of 37% in the Assessment for 2014. The opposite effect will occur in the next calendar year. Less cash was needed in FY 2014 to pay all expenses. Thus, a decrease of 22% will take place in the annual Assessment for calendar year 2015.